



NASA OFFICE OF INSPECTOR GENERAL

OFFICE OF INVESTIGATIONS

SUITE 8U71, 300 E ST SW
WASHINGTON, D.C. 20546-0001

Mr. Daniel Oberhaus
MuckRock News
DEPT MR 73549
411A Highland Ave
Somerville, MA 02144-2516

OCT 03 2019

E-mail: 73549-76421911@requests.muckrock.com

Re: Freedom of Information Act (FOIA) Request #19-OIG-F-00542/2019-36

Dear Mr. Oberhaus:

This letter concerns a May 16, 2019, Freedom of Information Act (FOIA) request that you submitted to the NASA Office of Inspector General (OIG). This FOIA request was assigned tracking #19-OIG-F-00542/2019-36. Pursuant to the FOIA (5 U.S.C. § 552), you requested certain NASA OIG records, described as follows:

A copy of all "records of SPI's handwritten material properties test results obtained by NASA OIG" alluded to on page 3 of the 'NASA Investigative Summary: Taurus XL T8 and T9 Mission Failures; and

All emails to and/or from NASA OIG Inspector General Paul Martin regarding fraud committed by "Hydro Extrusion Portland, Inc.," "Sapa Profiles Inc.," "Hydro Extrusion USA, LLC," "Sapa Extrusions Inc.," "SEI," and "SPI" from the period of January 1, 2013 to the present.

With respect to hand-written material properties test results, the OIG has located approximately 2,000 pages of records that are potentially responsive to your request. These records were submitted to the Office of Inspector General by a third party, in this case Sapa Profiles, Inc. (SPI). Therefore, as required by the FOIA, we provided SPI with notice that these records have been requested, and offered them the opportunity to comment or object to release of the information pursuant to 14 CFR §1206.600 et seq. Having received a timely response from SPI objecting to release of the records, I have considered the legal arguments supporting their objections and find them to be persuasive. Accordingly, for the reasons set forth below, I have

determined that the Office of Inspector General has no releasable records which are responsive to your request for material properties test results.

Exemption (b)(4) of the FOIA (5 U.S.C. §552 (b)(4)) protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." This exemption is intended to protect the interests of both the government and submitters of information. Its very existence encourages submitters to voluntarily furnish useful commercial or financial information to the government and it correspondingly provides the government with an assurance that such information will be reliable. The exemption also affords protection to those submitters who are required to furnish commercial or financial information to the government by safeguarding them from the competitive disadvantages that could result from disclosure. The exemption covers two broad categories of information in federal agency records: (1) trade secrets; and (2) information that is (a) commercial or financial, and (b) obtained from a person, and (c) privileged or confidential.

The U.S. Supreme Court recently clarified the scope of Exemption (b)(4) in *Food Marketing Institute v. Argus Leader Media* (588 U. S. ____ (2019)). The Court held that "where commercial or financial information is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy, the information is 'confidential' within the meaning of Exemption 4."

I conclude that the requested SPI documents fall squarely within FOIA Exemption (b)(4), in light of the expansive interpretation of the exemption by the Court in *Food Marketing*. The requested records are almost entirely comprised of SPI's commercial information, including customer names, manufacturing information (die and alloy numbers), and extensive testing data. The information fits within the Court's definition of "confidential" because SPI has not and does not share this information publicly, nor is it available to the public from other sources. SPI produced these documents to NASA on October 28, 2014, in response to a request by NASA and the Department of Justice ("DOJ"). SPI's cover letter accompanying the production of the records explicitly stated that the documents are confidential and that FOIA exemptions, including FOIA Exemption (b)(4), applied to the documents. The documents themselves bear Bates-stamp markings that read: "CONFIDENTIAL TREATMENT REQUESTED BY SAPA PROFILES, INC." I conclude that SPI expected that NASA would maintain the confidentiality of the information in the test records.

With respect to your request for certain emails to or from the Inspector General, we located approximately 41 emails that are potentially responsive to the request. Three of those emails are releasable under the FOIA, with minor redactions under Exemptions (b)(6), (b)(7)(C) and (b)(7)(D). Exemption (b)(6) of the FOIA exempts from disclosure all information about individuals in "personnel and medical files and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." Exemption (b)(7)(C) provides protection for law enforcement information, the disclosure of which "could reasonably be expected to constitute an unwarranted invasion of personal privacy." Exemption (b)(7)(C) is routinely applied to protect the personal privacy interest of law enforcement personnel involved in conducting investigations. Exemption (b)(7)(D) affords protection to all "records or information compiled for law enforcement purposes [which] could reasonably be

expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source." The releasable emails have been combined into one (1) PDF document and are enclosed with this letter. The non-releasable portions of the enclosed documents have been redacted and annotated to note the authority under which each redaction has been made.

The remaining potentially responsive emails are exempt from disclosure under Exemption (b)(5) of the FOIA (5 U.S.C. §552(b)(5)). Exemption (b)(5) of the FOIA exempts from disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." This exemption extends to records which fall within the deliberative process privilege, which prevents injury to the quality of agency decisions. Specifically, three policy purposes consistently have been held to constitute the bases for this privilege (1) to encourage open, frank discussions on matters of policy between subordinates and superiors; (2) to protect against premature disclosure of proposed policies before they are finally adopted; and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency's action. The privilege protects not merely documents, but also the integrity of the deliberative process itself where the exposure of that process would result in harm.

Also falling within Exemption (b)(5) are the attorney work-product privilege and the attorney-client privilege. The attorney work-product privilege protects documents and other memoranda prepared by an attorney in contemplation of litigation. As its purpose is to protect the adversarial trial process by insulating the attorney's preparation from scrutiny, the work-product privilege ordinarily does not attach until at least "some articulable claim, likely to lead to litigation," has arisen. The privilege is not limited to civil proceedings, but rather extends to administrative proceedings and to criminal matters as well. The privilege has also been held applicable to documents generated in preparation of an amicus brief. The attorney-client privilege concerns "confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice." Unlike the attorney work-product privilege, the attorney-client privilege is not limited to the context of litigation. Moreover, although it fundamentally applies to facts divulged by a client to his attorney, this privilege also encompasses any opinions given by an attorney to his client based upon, and thus reflecting, those facts, as well as communications between attorneys that reflect client-supplied information.

The emails which are being withheld from release encompass all three of the privileges described above. They involve deliberative communications between the Inspector General and his own staff about the proper strategies and courses of action related to the investigation of SPI and the attendant litigation. They involve communications between the Inspector General and his own legal staff, as well as legal counsel for NASA and the Department of Justice, regarding the SPI investigation and litigation. Several of the emails concern the review and comment on various draft (pre-decisional) documents related to the SPI investigation and litigation.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should be taken as an indication that excluded records do, or do not, exist.

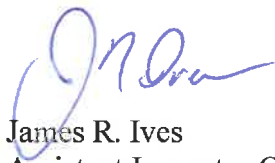
You may contact our FOIA Public Liaison, Francis P. LaRocca at 202-358-2575 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

You also have the right to appeal this initial determination to the Deputy Inspector General. Pursuant to 14 CFR §1206.700(b), the appeal must (1) be in writing; (2) be addressed to the following:

NASA, Office of Inspector General
Headquarters
300 E Street, SW, Suite 8V39
Washington, D.C. 20546-0001
Attn: George A. Scott, Deputy Inspector General;

(3) be identified clearly on the envelope and in the letter as "Freedom of Information Act Appeal"; (4) include a copy of the request for the Agency record and a copy of the adverse initial determination; (5) to the extent possible, state the reasons why the requester believes the adverse initial determination should be reversed; and (6) must be postmarked and sent to the Deputy Inspector General within 90 calendar days of the date of receipt of the initial determination.

Sincerely,



James R. Ives
Assistant Inspector General for Investigations
OIG FOIA Officer – Investigations

Enclosure(s)

(b)(6), (b)(7)(C)

(HQ-WAH10)

From: (b)(6), (b)(7)(C), (b)(7)(D)
Sent: Saturday, May 4, 2019 12:06 PM
To: Martin, Paul K. (HQ-WAH10)
Subject: aluminum industry criminality

(b)(6), (b)(7)
(C), (b)(7)(D)

May 4, 2019

Inspector General Paul K. Martin
300 E Street, SW
Washington, DC 20546

Inspector General Martin:

I noted additional issues with the aluminium industry (see below). Please continue to keep an extremely close eye regarding aluminium industry machinations with these issues as the Nation's citizens should NOT be "footing the bill" on these nefarious and criminal strategies involving bribery, extortion and outright thievery. I look forward to your offices taking the necessary actions to address hardworking taxpayers citizens'

concerns from the City of Pompano Beach, Broward County, State of Florida.

Thank you for your time in this matter. xxxx Company scandals: First diesel engine emissions, now aluminum extrusions strength With the Volkswagen emissions scandal still fresh in the memory, and with the repercussions of it likely to unfold for several months to come, the aluminium business could now be rocked by a scandal much closer to home.

Late on Monday came the astonishing admission from US extruder Sapa Profiles that test results over a period of 19 years for mechanical properties of some aluminum extrusions manufactured at SPI facilities in Portland, Oregon, were altered to show they passed when, in fact, they failed.

"Specifically, we have learned that some test results for mechanical properties — ultimate tensile strength, yield strength, and elongation — have been altered to change failing test results to passing test results between 1996 and 2015," Sapa said in a statement on its website, dated November 9.

It further describes this as an "unsanctioned practice" which is "completely unacceptable." And, it says, the employees concerned have been terminated. For SPI, the investigation relates to aluminum extrusions manufactured in 2000 and 2002 and delivered to a supplier to NASA.

The US Department of Justice Civil Division is now investigating some government suppliers, including SPI's Technical Dynamics Aluminum division, based in Vancouver, Washington. SPI has been temporarily suspended as a US federal government contractor since September 30 as a result of these investigations.

These scandals are salutary reminders to not get sucked into companies'

claims that their products are cleaner, safer, stronger, better and more rigorously tested than anything else out there on the market.

Unfortunately, for the public and governments that depend on the products of such companies, these scandals prove that we live in a world today where no statement, written or verbal, from any commercial organization, can be taken at face value.

That is a real problem when a consumer is buying a product made of parts and materials they might depend on to save their lives one day.

Sapa Extrusions North America is undergoing audits, with support from a third-party expert, to verify all its "testing labs meet both industry standards as well as our customers' requirements," the company's statement said.

The VW and Sapa scandals should serve as big wake-up calls to the CEOs of every manufacturing company and government contractor to the very real possibility that such scandals could exist within their own organizations.

CEOs who spend more time sweet-talking Wall Street or catering to stakeholders rather than understanding the inner workings and practices of their factory floors will run afoul of governments if it means more planes crash, more ships sink, more carnage on the roads, compromised defense equipment, or devastating environmental consequences.

Sincerely,

(b)(6), (b)(7)
(C) (b)(7)(D)

This message has been verified by CapwizXC as authentic and sent by this individual. Authentication ID: [30mfmm9]

(b)(6), (b)(7)(C)

(HQ-WAH10)

From: Ives, James R. (HQ-WIH10)
Sent: Monday, July 31, 2017 11:32 AM
To: Martin, Paul K. (HQ-WAH10)
Cc: Juhans, Renee N. (HQ-WAH10); Garris, John (HQ-WIH10)
Subject: FW: Plea in SAPA Case

FYI.

From: "Corbett, John H. (HQ-WIT72)" <john.h.corbett@nasa.gov>
Date: Monday, July 31, 2017 at 10:47 AM
To: "Ives, James R. (HQ-WIH10)" <james.r.ives@nasa.gov>, "Garris, John (HQ-WIH10)" <john.garris@nasa.gov>
Cc: "Searle, Patricia A. (HQ-WIF76)" <patricia.a.searle@nasa.gov>
Subject: Plea in SAPA Case

<https://www.justice.gov/opa/pr/former-supervisor-portland-oregon-area-manufacturing-company-pleads-guilty-role-product>

John H. Corbett
Special Agent in Charge
NASA OIG Office of Investigations
Mail Code W-JS2
Johnson Space Center
Houston, TX 77058
Phone (b)(6), (b)(7)(C)

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Martin, Paul K. (HQ-WAH10)

From: IVES, JAMES R. (HQ-WIH10)
Sent: Wednesday, September 30, 2015 9:42 PM
To: MARTIN, PAUL K. (HQ-WAH10); ROBINSON, GAIL A. (HQ-WAH10)
Subject: Fwd: Sapa Profiles and KST/DME

FYI.

Begin forwarded message:

From: "Aquino-Thieman, Monica A. (HQ-MD000)" <monica.aquino@nasa.gov>
Date: September 30, 2015 at 8:35:39 PM EDT
To: "IVES, JAMES R. (HQ-WIH10)" <james.r.ives@nasa.gov>, "Garris, John (HQ-WIH10)" <john.garris@nasa.gov>
Subject: Sapa Profiles and KST/DME

Jim and John,

For your situational awareness - NASA suspended Sapa Profiles from government contracting today and notified Sapa's counsel.

KST, DME, Mitchell Evans, and Dianne Evans also were suspended today. KST should receive the notice tomorrow, but it may take an extra day or two for DME and the Evans because they are located in Hawaii.

Monica

Monica Aquino-Thieman
Director, Acquisition Integrity Program (Fraud Remedies)
Office of the General Counsel
NASA Headquarters
300 E Street, SW
Washington, DC 20546
Phone: (b)(6), (b)(7)